



REPUBLIC OF KENYA



**Venture Holdings Limited v Waita (Civil Application E254 of 2024)  
[2024] KECA 1100 (KLR) (19 August 2024) (Ruling)**

Neutral citation: [2024] KECA 1100 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E254 OF 2024  
S OLE KANTAI, A ALI-ARONI & LA ACHODE, JJA  
AUGUST 19, 2024**

**BETWEEN**

**VENTURE HOLDINGS LIMITED ..... APPLICANT**

**AND**

**EMILY MWENDE WAITA ..... RESPONDENT**

*(An application for extension of the decision of the High Court of Kenya at Nairobi (E. K. Wabwoto, J.) dated 21st September, 2023 in H.C ELC Misc. No. 4 of 2016 Consolidated with ELC Misc. No. 5 of 2016, ELC Misc. No. 10 of 2016, ELC Misc. No. 85 of 2016 and ELC Misc. No. 333 of 2019)*

**RULING**

1. In a judgment delivered by Wabwoto, J. on 21<sup>st</sup> September, 2023 sitting in the Environment and Land Court ('ELC') at Nairobi the Judge found in favour of the respondents in the consolidated suits and entered judgment as follows:

- “ 1) Judgment is entered in favour of the applicant for the sum of Kshs.13,488,410/= payable within 90 days from today.
2. Judgment for Beatrice Akinyi Migoye for the sum of Kshs.13,488,410/= payable within 90 days from today.
3. Judgment for Chege Phares Thumbi and Christopher Theriki Echaria for the sum of Kshs.26,951,000/= payable within 90 days from today.
4. Judgment for Maria Njeri Matubia for the sum of Kshs.13,500,000/= payable within 90 days from today.



5. Judgment in favour of Rose Mbarari Karingi for the sum of Kshs.13,488,410/ = payable within 90 days from today.
  6. Upon payment of the said monies, the recipients to immediately hand over vacant possession of the said apartments to the Respondent.
  7. Each party to bear own costs of the suit.”
2. A decree was issued on 23<sup>rd</sup> May, 2024 in terms of the said judgment.
  3. The applicant Venture Holdings Limited made an application to that Court where various orders were asked for. The Judge ordered in a ruling that Notice of Appeal dated 3<sup>rd</sup> October, 2023 be deemed as duly filed within time upon payment of requisite fees; that pending hearing and determination of the appeal, a stay of execution was granted against that judgment. The Judge ordered:
    - c). That an order of stay is hereby issued on condition that security of costs of Kshs.20,000,000/- be deposited in a joint interest earning account in the names of the parties Advocates on record within 30 days of delivery of this ruling.
    - d. Failure to comply with order (c) above, the stay issued herein shall automatically lapse without further reference to this Court.”
  4. Each party was asked to meet its costs of the application.
  5. The applicant filed a Notice of appeal against the said judgment delivered on 21<sup>st</sup> September, 2023 but there is no notice of appeal against the said ruling.
  6. In the Motion before us said to be brought under various provisions of law including section 1A, 3A and 80 *Civil Procedure Act* (these have no application to us), rule 5 (2)(b) *Court of Appeal Rules* and the provisions of *Civil Procedure Rules* which have no relevance here we are asked in the main:
 

That pending the hearing and determination of this Application inter parties, the Honourable Court be pleased to review and set aside the orders given in the Judgment dated 21<sup>st</sup> September, 2023 and be pleased to grant the applicant unconditional stay pending hearing and determination of the appeal filed herein. ...”
  7. It is stated in grounds in support of the Motion and supporting affidavit of Kimani Kariuki, a director of the applicant, that unless the orders prayed for are granted the appeal will be rendered nugatory; that the application has been brought without delay; that the respondents will not be prejudiced if we stay the judgment and that it is in the interests of justice that the application be granted. Further, that the applicant is the vendor of the suit property and claimant in a pending suit being ELC 88 of 2019 between the applicant and the registered proprietor of the suit property where specific performance is sought; that the applicant sought to review the conditional stay granted by the trial Judge which application was dismissed by Mbugua, J. on 29<sup>th</sup> April, 2024. The applicant says at paragraph 7 of the supporting affidavit:
    7. That following the Ruling, circumstances have changed that may necessitate a review of the orders as the Applicant is having difficulty raising the said amount due to the tough economic times, given the economy has been in shambles since 2020 on account of the coronavirus global pandemic to date. (Annexed herewith and marked as “KK-4” is a copy of the draft Notice of Appeal.)”



8. It is stated that the subject property has appreciated in value since 2011, when the respondents acquired the property and would not suffer any prejudice if stay of execution was granted; that the applicant has an arguable appeal which will be rendered nugatory if we do not grant a stay of execution pending appeal.
9. There are “Grounds of Opposition” but as we pointed out to learned counsel for the respondents Mr. Okulo that document has no place in our rules.
10. The Motion came up for hearing before us on 15<sup>th</sup> July, 2024 and was urged by learned counsel Mr. Kounah for the applicant but was opposed by Mr. Okulo for the respondents. Both sides had filed written submissions which we have considered.
11. The principles that guide the Court in an application of this nature are well known and were well summarized in the case of *Stanley Kangethe Kinyanjui vs. Tony Ketter & Others* [2013] eKLR. For an applicant to succeed it must, firstly, show that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that it is not frivolous. Such an applicant must, in addition, demonstrate that the appeal would be rendered nugatory absent stay.
12. Judgment was entered for the respondents and the applicant successfully applied to the trial court for stay of execution pending appeal. The trial court gave a conditional stay of execution with a default clause that stay of execution granted would lapse automatically if the condition given to the applicant was not met. The applicant did not meet the condition. It instead went back to that court asking for review of the orders that had been granted. That application for review was refused and was dismissed. The applicant did not appeal the decision giving a conditional stay of execution and did not appeal the latter decision refusing to review the decision. The applicant is seeking to “review” that decision but we have no jurisdiction to do that.
13. We also find that the applicant has not satisfied the principles for the grant of an application for a stay of execution pending appeal. The Motion fails and is dismissed. Costs to the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF AUGUST, 2024.**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

**ALI - ARONI**

.....

**JUDGE OF APPEAL**

**L. ACHODE**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

